



MEMORANDUM

To: PLANNING COMMISSION

Date: May 22, 2007

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: DEVELOPMENT AGREEMENT AMENDMENT, APPLICATION DAA-06-06: MONTEREY - GUNTER

REQUEST

The applicant is requesting an amendment to an approved Development Agreement for a 15 unit vertical mixed use development. The amendments requested are to allow for a one-year extension on the commencement of construction deadline and amend the project development schedule.

RECOMMENDATION

Environmental Assessment: N/A

Application DAA06-06: Adopt Resolution amending Development Agreement.
Adopt Resolution amending the Development Schedule

Processing Deadline: December 2, 2007

BACKGROUND

The project was awarded 15 allotments through the Small Vertical Mixed Use Category of the RDSCS: four for FY 2006-07, one for FY 2008-09, and 10 for FY 2009-10. The applicant proposes to build a 15-unit mixed use residential development on an approximate one acre site located between Monterey Rd and McLaughlin Ave, approximately 100 ft north of E. Main Ave. The project will be constructed in two phases. The first phase will include an approximate 27,500-sf, three-story building consisting of retail and office uses on the bottom floor and four residential units on the second and third floors. The applicant received Architectural and Site Plan approval for the Phase 1 building in November 2005. The second phase of the project will include the expansion of the three-story building for the remaining 11 residential units and

construction of parking garages. The applicant has applied for building permit and is currently in plan check for the phase one improvements.

CASE ANALYSIS

According to the currently approved development agreement schedule, the applicant should have pulled building permits by January 31, 2007 and commenced construction by April 30, 2007. As stated in the attached letter from the applicant, the building permit plan check process has taken longer than expected, requiring redesign of the structural, mechanical, and plumbing components of the building. The building plans have gone through two plan check cycles and will require a third re-check at a minimum before the plans are ready to issue the building permit. While the applicant hopes to obtain a building permit before the June 30, 2007 deadline for the first 4 units, it is not likely that the project will be at the "Physical Commencement" threshold before the June 30th deadline. The applicant would like a one-year extension of the current fiscal year allocation expiration of 6/30/07.

The purpose of the processing schedule is to allow the City to track the progress of each project through the RDCS Quarterly report to prevent the allocations from expiring. As part of the Commission's review of the quarterly report, this project was identified as behind schedule.

Due to the progress the applicant has made in seeking planning entitlements and building permits staff recommends approval of the one-year extension. The extension will allow the applicant to stay in compliance with the development schedule and would provide additional time to deal with any additional unforeseen delays (see attached letter from applicant.)

Staff is also recommending that the development schedule for the project be amended. A second resolution has been provided which allows the Commission to approve the project development dates separate from the development agreement.

RECOMMENDATION

Staff recommends approval of a one-year extension of the "commence construction" date as shown in Exhibit A of the development agreement amendment resolution. Also recommended is adoption of a resolution amending the separate project development schedule. This schedule was previously approved by Planning Commission resolution.

Attachments:

1. Applicant's letter of request
2. Resolution recommending approval of DAA
3. Resolution amending project development schedule

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-06-06: MONTEREY - GUNTER FOR APPLICATION MC-05- 03: MONTEREY - GUNTER (APN 726-23-008)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 15 building allotments for application MC-05-03: Monterey - Gunter; and

WHEREAS, in January 2007, the City Council approved the development agreement for application MC-05-03: Monterey-Gunter; and

WHEREAS, the applicant is requesting to amend the approved development agreement to allow for a one-year extension to the "commence construction" deadline for the 4 building allotments awarded for FY 2006-07; and

WHEREAS, said development agreement amendment was considered by the Planning Commission at their regular meeting of May 22, 2007, at which time the Planning Commission recommended approval of development agreement amendment application DAA- 06-06: Monterey – Gunter; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT AMENDMENT. The Planning Commission hereby recommends to the City Council adoption of the modified Development schedule for MP-05-03: Monterey - Gunter; attached to this resolution as Exhibit B.

SECTION 2. EXCEPTION TO LOSS OF BUILDING ALLOTMENT. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Delays in the project processing have occurred due to the need to make structural and other design changes identified in the building permit plan check process. Based on the findings required in Section 18.78.125 of the Municipal Code, the Planning Commission recommends approval of the development agreement amendment to allow for a one-year extension of time, or Exception to Loss of Building Allotment.

RESOLUTION NO.
PAGE 2

**PASSED AND ADOPTED THIS 22nd DAY OF MAY 2007, AT A REGULAR MEETING OF
THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

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EXHIBIT "B"

**DEVELOPMENT SCHEDULE MC-05-03: MONTEREY - GUNTER
FY 2006-07 (4 allocations)/FY 2009-10 (11 allocations)**

I. COMMENCE CONSTRUCTION:

FY 2006-07 (4 units)

~~06-30-2007~~

06-30-2008

FY 2009-10 (11 units)

06-30-2010

Failure to commence construction by the dates listed above shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 8 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The development schedule for construction of the 15 units may be accelerated in accordance with the provisions of Measure F, approved by the voters in November 2006.

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT SCHEDULE FOR APPLICATION MC-05-03: MONTEREY – GUNTER (APN 726-23-008)

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 15 building allotments for application MC-05-03: Monterey - Gunter; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System (RDCS), Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, prior to October 25, 2006, Development Agreements incorporated a development schedule to ensure projects comply with the statutory deadlines of the RDCS; and

WHEREAS, to extend deadlines outlined in the development schedule, a property owner/developer was required to file an application to amend the Development Agreement which required public hearings and adoption of an ordinance by the City Council; and

WHEREAS, rather than continuing to require developers to go through a legislative process to amend their development schedules, the Planning Commission adopted Policy PCP-06-01 which allows development schedules and extension of time requests to be approved and adopted by Planning Commission Resolution on consent calendar; and

WHEREAS, PCP-06-01 became effective on October 25, 2006; and

WHEREAS, the amended development schedule for application MC-05-03: Monterey – Gunter was considered by the Planning Commission at their regular meeting of May 22, 2007, at which time the Planning Commission approved the amended development schedule.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. ADOPTION OF AMENDED DEVELOPMENT SCHEDULE. The Planning Commission hereby adopts the Development Schedule for MC-05-03: Monterey - Gunter attached to this Resolution as Exhibit A.

SECTION 2. The development schedule for the 15 units may be accelerated in accordance with the provisions of Measure F, approved by the voters in November 2006.

Resolution No.
Page 2

**PASSED AND ADOPTED THIS 22ND DAY OF MAY 2007, AT A REGULAR MEETING
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

EXHIBIT "A"

DEVELOPMENT SCHEDULE MC-05-03: MONTEREY - GUNTER
FY 2006-07 (4 allocations)/FY 2009-10 (11 allocations)

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	06-30-2007
II. SITE REVIEW APPLICATION	
Application Filed:	
FY 2006-07 (4 units)	09-30-2006
FY 2009-10 (11 units)	09-30-2008
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	
FY 2006-07 (4 units)	01-31-2008
FY 2009-10 (11 units)	01-31-2009
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2006-07 (4 units)	08-01-2006
FY 2009-10 (11 units)	05-15-2009
V. BUILDING PERMITS	
Obtain Building Permits:	
FY 2006-07 (4 units)	01-31-2007
	07-31-2007
FY 2009-10 (11 units)	09-30-2009
Commence Construction:	
FY 2006-07 (4 units)	04-30-2007
	04-30-2008
FY 2009-10 (11 units)	04-30-2010

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 8 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Gunter Building, LLC
Vista Del Toro Building
17600 Monterey Rd., Suite C
Morgan Hill, CA 95037
(408) 779.7991

April 27, 2007

PLANNING DEPT.

MAY 02 2007

CITY OF MORGAN HILL

Mr. Jim Rowe
Ms. Rebecca Tolentino
Community Development Department -Planning Division
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA. 95037

Re: Vista Del Toro
176660 Monterey Rd.
Morgan Hill, CA. 95037
MC-05-03, Monterey-Gunter *DA-06-06*
Request for Development Agreement Amendment and Extension

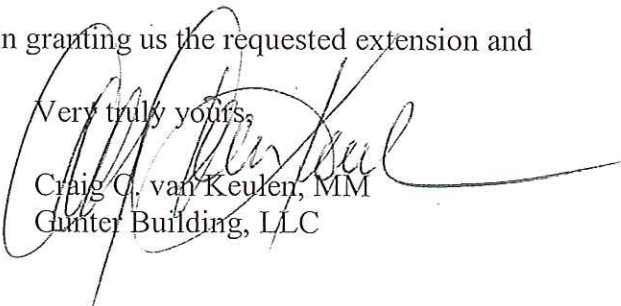
Dear Mr. Rowe and Ms. Tolentino,

By this letter I am requesting a one year extension of time to comply with my Development Agreement deadlines and requirements.

As you know, our building is the first three story, mixed use building (retail, office and residential) to be built in the City of Morgan Hill. We have been working diligently to obtain our building permits for the proposed development, however, due to structural and other and related design criteria unique to a three story multi-use structure, not fully understood by our local design and construction team, certain extensive redesign and reconfiguration of the plans has been necessary. Because this is a new structure for local professionals the delay is not anyone's fault, as this has been an evolving process which has taken longer than expected. We have been through two outside plan checks and expect to be submitting for our final plan check in the next few weeks. We will then need to proceed for the last time with the bid and financing legs of the process. Also, once the construction details for the main building are complete, we will be able to proceed with preparation of the floor plans for the four residential units on the third floor.

Thank you for your consideration in granting us the requested extension and amendment.

Very truly yours,


Craig C. van Keulen, MM
Gunter Building, LLC